

U.S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
RECEIVED - ALEXANDRIA

MAR 31 2009

ROBERT H. SHENKILL, CLERK
BY [Signature] DEPUTY

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

JOHN MARK TAYLOR, et al.

CIVIL ACTION NO. 07-2054-A

-vs-

JUDGE DRELL

**TENSAS BASIN LEVEE BOARD DISTRICT
and LEVEE DISTRICTS IN THE STATE OF
LOUISIANA, et al.**

MAGISTRATE JUDGE KIRK

JUDGMENT

Before the Court is the Magistrate Judge's Report and Recommendation (Document No. 124) concerning two pending summary judgment motions (Document Nos. 59 and 62). After independent (de novo) review of the record, including the written objections, and concurring in part with the Magistrate Judge's findings under the applicable law, this Court adopts the Magistrate Judge's Report and Recommendation subject only to the modifications outlined herein.

Although the Report and Recommendation is couched in terms of frivolousness, our analysis indicates the issue is more accurately framed as prematurity. The Report and Recommendation correctly observes that, on the facts of this case, there has been no trespass and no damage. There is also an apparent advance amelioration of what was an initial guideline from the Corps of Engineers. This guideline purported to authorize or require cutting beyond the

rights of way. Subsequent publications and statements leave the issue in doubt. Put succinctly, the case is more about anticipatory trespass. We agree the suit should be dismissed at this juncture, but not on the grounds stated.

Additionally, because of the obvious conflict created by the Corps of Engineers' own documents, we cannot say sanctions are appropriate under these circumstances.

Accordingly,

IT IS ORDERED that judgment is entered GRANTING the motions for summary judgment of Bossier Levee District, Natchitoches Levee & Drainage District, and Board of Commissioners of the Tensas Basin Levee District (Document Nos. 59 and 62), and dismissing them WITHOUT PREJUDICE to the right of plaintiffs to re-file in the event there is later an appropriation or damage.

IT IS FURTHER ORDERED that Red River Atchafalaya and Bayou Boeuf Levee District is DISMISSED for lack of service.

SIGNED on this 31st day of March, 2009, at Alexandria, Louisiana.

A handwritten signature in black ink, appearing to read "Dee D. Drell", is written over a horizontal line.

DEE D. DRELL
UNITED STATES DISTRICT JUDGE